



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Poulsen Roser Pacific, Inc.
620 South Front Street
Central Point OR 97502

COPY MAILED

SEP 20 2005

OFFICE OF PETITIONS

In re Application of
Olesen
Application No. 10/798,699
Filed: March 10, 2004
Attorney Docket No. EVIPO018
FOR: CLEMATIS PLANT NAMED "EVIPO018"

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a) to revive the above-identified application and the petition under 37 CFR 1.181 to withdraw the holding of abandonment. Both petitions were filed on June 6, 2005.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**.

The petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

The above-identified application became abandoned for failure to timely reply to the Notice of Allowance and Fee(s) Due, mailed November 16, 2004, which set a period for reply of three (3) months. Having received no reply, the Office deemed this application abandoned on February 17, 2005. A Notice of Abandonment was mailed on May 25, 2005.

Petitioner alleges that he did not receive the November 16, 2004 Notice of Allowance and Fee(s) Due. It is assumed that petitioner did not receive the November 16, 2004 Notice of Allowability, as well. The showing required to establish nonreceipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in

practitioner's statement.¹

A review of the record indicates no irregularity in the mailing of the November 16, 2005 Notices, and in the absence of any irregularity there is a strong presumption that the communications were properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communications were not in fact received.

Petitioner has provided adequate evidence to show that the delay in submitting the issue fee was unavoidable. Practitioner states that a search of the file jacket and docket records shows that the November 16, 2004 Notice was not received at the correspondence address of record. Practitioner has provided a copy of the docketing records where correspondence would have been entered had the November 16, 2004 Notice been received. There is no mention of the November 16, 2004 Notice. The evidence is persuasive that the delay in responding to the November 16, 2004 Notice of Allowance and Fee(s) Due was unavoidable.

The petition under 37 CFR 1.181 is **granted**. The holding of abandonment is withdrawn.

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

Regarding finances, the \$250.00 petition to revive fee and the \$300.00 publication fee will be credited to deposit account no. 50-1828. Both fees are unnecessary because (1) the petition under 37 CFR 1.137(a) was dismissed as moot and (2) the application was filed with a nonpublication request.

The November 16, 2004 Notices will not be remailed with a new period set for response in the interest of avoiding further delay. It is noted that petitioner has paid the issue fee due. However, petitioner has not submitted an Issue Fee Transmittal Form (PTOL-85b). Accordingly, if petitioner desires to have the information normally found thereon printed on any future patent, the attached Fee Transmittal Form should be completed and returned to the Publishing Division within ONE MONTH from the mail date of this decision.

Copies of the November 16, 2004 Notices are included to complete petitioner's records.

After the mailing of this decision, the application file will be forwarded to Publishing Division for processing into a patent.

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Telephone inquiries may be directed to the undersigned at (571) 272-3230.

A handwritten signature in black ink, appearing to read "E. Shirene Willis". The signature is written in a cursive, flowing style.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

enclosures: Notice of Allowance and Fee(s) Due - November 16, 2004
Notice of Allowability - November 16, 2004.